

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

Armando Ybarra,

Plaintiff,

v.

DISH Network, LLC,

Defendant.

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: Civil Action No.: 4:13-cv-00963
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:

: **COMPLAINT**
: **JURY TRIAL DEMANDED**
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For this Complaint, the Plaintiff, Armando Ybarra, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, Armando Ybarra ("Plaintiff"), is an adult individual residing in Fort Worth, Texas.
4. Defendant DISH Network, LLC ("DISH"), is a Colorado business entity with an address of 9601 South Meridian Boulevard, Englewood, Colorado 80112.

FACTS

5. Within the last four (4) years, Defendant contacted Plaintiff by placing numerous calls to Plaintiff's cellular telephone.

6. The calls from Defendant originated from the following numbers, including but not limited to, (888) 337-XXXX.

7. Plaintiff has no prior business relationship with Defendant and never provided his express consent to be contacted on his cellular telephone.

8. At all times mentioned herein, Defendant placed calls to Plaintiff using an automated telephone dialing system ("ATDS") and/or by using an artificial or prerecorded voice.

9. When answering Defendant's ATDS calls, Plaintiff heard a prerecorded message stating Defendant was attempting to contact someone other than Plaintiff regarding payment for previous services rendered.

10. On at least one occasion, Plaintiff called Defendant in order to speak with a live representative. During such conversations, Plaintiff informed Defendant it was calling the wrong person and number and requested Defendant cease all calls to his cellular telephone.

11. Despite such request, Defendant continued to place ATDS telephone calls to Plaintiff's cellular telephone.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. At all times mentioned herein and within the last four years, Defendant called Plaintiff on his cellular telephone using an ATDS and/or by using a prerecorded or artificial voice.

14. Plaintiff did not provide his consent to be contacted on his cellular telephone and in fact instructed Defendant on multiple occasions to stop all calls to him and cease calling his cellular telephone.

15. Defendant continued to place automated calls to Plaintiff's cellular telephone using a prerecorded voice knowing that it lacked consent to call his number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

17. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. The foregoing acts and omissions of the Defendant constitute numerous and multiple violations of the Telephone Consumer Protection Act, including every one of the above-cited provisions.

19. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the

Defendant:

1. Statutory damages of \$500.00 for each violation pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful or intentional pursuant to 47 U.S.C. § 227(b)(3)(C);
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: December 4, 2013

Respectfully submitted,

By /s/ Jody B. Burton

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